COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In the Matter of Petition for Arbitration of an Interconnection Agreement Between Charter Fiberlink MA-CCO, LLC, and Verizon-Massachusetts Inc.	D.T.E. Docket No. 06-56

MOTION FOR CONFIDENTIAL TREATMENT

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") hereby requests that the Department provide confidential treatment for the names of the four carriers with whom Verizon MA has fiber meet arrangements in Massachusetts, provided today in response to the Department's Information Request No. 1-2. As grounds for this motion, Verizon MA states that the fact that particular named carriers have seen fit to build and use fiber meet arrangements to exchange traffic with Verizon MA qualifies as trade secrets and/or confidential, competitively sensitive and/or proprietary information of those carriers under Massachusetts law and are therefore entitled to protection from public disclosure.

Argument

Section 5 of Massachusetts General Laws Chapter 25 provides that "[t]he Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter."

In determining whether certain information qualifies as a "trade secret,"[1] Massachusetts courts have considered the following:

> (1) the extent to which the information is known outside of the business;
>
> (2) the extent to which it is known by employees and others involved in the business;
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> (3) the extent of measures taken by the employer to guard the secrecy of the information;
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> (4) the value of the information to the employer and its competitors;
>
> (5) the amount of effort or money expended by the employer in developing the information; and
>
> (6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972). The protection afforded to trade secrets is widely recognized under both federal and state law. In Board of Trade of Chicago v. Christie Grain & Stock Co., 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has "the right to keep the work which it had done, or paid for doing, to itself." Similarly, courts in other jurisdictions have found that "[a] trade secret which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one's competitors were compelled." Mountain

[1] Under Massachusetts law, a trade secret is "anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement." Mass. General Laws c. 266, § 30; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court ("SJC"), quoting from the Restatement of Torts, § 757, has further stated that "[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors ... It may be a formula treating or preserving material, a pattern for a machine or other device, or a list of customers." J.T. Healy and Son, Inc. v. James Murphy and Son, Inc., 260 N.E.2d 723, 729 (1970).

States Telephone and Telegraph Company v. Department of Public Service Regulation, 634 P.2d 181, 184 (1981).

The fact that a particular carrier exchanges sufficient traffic with Verizon MA to warrant construction of one or more fiber meet arrangements in Massachusetts is confidential information known only to that carrier and to Verizon MA. To Verizon MA's knowledge, none of the carriers whose identity is at issue has publicly disclosed the fact that it has such arrangements with Verizon MA. Other carriers, such as Charter and other CLECs, will likely find it valuable to know which of their competitors enjoy the advantages and have gone to the expense of building fiber meet arrangements. Thus, this commercially valuable, secret information should be protected from public disclosure here.

Further, there is no compelling need for public disclosure of this information. The Department and the parties can easily make use of other information regarding the eight fiber meet points in Massachusetts that may become relevant in this matter without disclosing the names of the carriers who use those meet points. Accordingly, the interests of those carriers in preserving the confidentiality of this data outweighs any interest in public disclosure.

WHEREFORE, Verizon MA respectfully requests that the Department grant this motion.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorneys,

/s/ Alexander W. Moore

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